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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,209	09/11/2003	A. Bart Flick	120101.1070	6556
23552	7590	10/05/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			LEWIS, KIM M	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/660,209

Applicant(s)

FLICK, A. BART

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004 and 09 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) 10-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3 and 5-9 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/11/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/29/03, 3/1/04, 7/24/04 & 8/9/04
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. attached.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Power of Attorney***

1. The Power of Attorney filed on 5/9/05 has been received and made of record.

### ***Response to Amendment***

2. The preliminary amendment filed on 2/2/04 has been received and made of record. As requested, the specification has been amended, claim 1 has been cancelled, and claims 2-21 have been added.

### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 2-9, drawn to a method of promoting healing of a pathology, classified in class 602, subclass 48.
  - II. Claims 10-16, drawn to a method of inducing an analgesic effect in an organism, classified in class 607, subclass 50.
  - III. Claims 17-21, drawn to a composition for inducing an analgesic effect in an organism, classified in class 424, subclass 443.

The inventions are distinct, each from the other because of the following reasons:

4. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In

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the instant case the different inventions are not disclosed as capable of use together and have different effects.

5. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together and have different effects.

6. Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using the product such as a method of covering a wound.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, the search required for Group I is not required for Groups II and III, restriction for examination purposes as indicated is proper.

8. During a telephone conversation with Charles Vorndran on September 28, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 2-9. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 10-21 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

9. The information disclosure statements filed 2/21/04, 10/24/03, 3/1/04, 7/26/04 and 8/9/04 have been received. Note the acknowledged forms PTO-1449 enclosed herewith.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 2, 3, 5, 6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,767,401 ("Seiderman").

As regards claim 2, Seiderman discloses the iontophoretic administration of ionizable polar medicaments to a mammalian body, which anticipates applicant's presently claimed invention. More specifically, Seiderman discloses placing a wound dressing on the wound of user (constituting bridging healthy tissue surrounding the pathology) and passively altering the pathology's electrical by conductively bridging healthy tissue surrounding the pathology potential (constituted by the mixing of the natural body fluids (col. 3, lines 1-7) to establish an electric current for delivering the

medicament (silver-ions) into the wound), wherein the alteration in the pathology's electrical potential inherently promotes healing of the pathology.

As regards claim 5, it is known that the pathologies electric potential is lowered since the produced currents interfere (lowers) with the neurological transmission of pain signals and concomitantly stimulates the release endorphins, the body's own natural analgesic (see U.S. patent 4,767,401, col. 4, lines 3-22).

As regards claim 5, note the rejection of claim 2 above. In further regard to claim 5, the bandage of Seiderman is a conductive substrate (22).

As regards claim 6, note col. 6, lines 3-17, which discloses that gauze pad (28) is coated with a mild solution of silver protein.

As regards claims 8 and 9, silver is a conductive metal.

### ***Claim Rejections - 35 USC § 103***

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seiderman.

As regards claim 7, Seiderman fails to teach the method of claim 6, wherein the conductive substrate further comprises a nonmetallized fiber. Instead Seiderman discloses that the bandage of Figs. 3 and 4 employs a surgical bandage, such as those marketed under the trademark CURAD. Further disclosed is that substrate (22) may be plastic or a polymeric substrate.

In light of the disclosure that the employed bandage is one marketed under the trademark CURAD, it would have been obvious to one having ordinary skill in the art at the time of invention, to select a CURAD bandage having a substrate constructed from paper (fiber) rather than plastic or polymeric substrates (e.g., latex) in order to avoid some of the allergic reactions associated with plastic and polymeric substrate bandages.

#### ***Allowable Subject Matter***

14. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

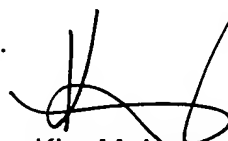
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis  
Primary Examiner  
Art Unit 3743

Kml  
September 28, 2005.